

FARMLAND DEVELOPMENT RIGHTS EASEMENT
[INSERT NAME] FARM

PR-0000

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Pursuant to the Conservation and Historic Preservation Easement Act, Sub Part 11 of Part 21 of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended, MCL Sections 324.2140 et seq.

BY THIS FARMLAND DEVELOPMENT RIGHTS EASEMENT, made this _____ day of _____, 2005, that [insert name], (hereafter collectively referred to as “Grantor”), whose address is [insert], conveys and warrants to the **MICHIGAN DEPARTMENT OF AGRICULTURE FOR AND ON BEHALF OF THE STATE OF MICHIGAN**, (hereafter “Grantee”), whose address is Environmental Stewardship Division, Department of Agriculture, P. O. Box 30449, Lansing, Michigan 48909, a Farmland Development Rights Easement (hereafter “Easement”) on the following described premises situated in the Township of [insert], County of [insert], State of Michigan:

PROPERTY DESCRIPTION:

(Hereafter referred to as the “Property”)

See Exhibit “A” Attached Hereto

AGRICULTURAL VALUES:

WHEREAS, The majority of the Property possesses soil types which are classified as prime farmland which is important to the people of the State of Michigan; and

WHEREAS, Preservation of this particular parcel will create a buffer between parcels under development pressure and adjacent farmland and will therefore aid in protecting that farmland; and

WHEREAS, The specific conservation values of the Property are located in an inventory (“Baseline Documentation Report,” dated [insert], on file at the office of the Grantee, and incorporated herein by this reference) of relevant features of the Property, consisting of reports, maps, photographs, and other documentation that the parties agree provides an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor desires to grant a development rights easement pursuant to section 324.2140 of the Natural Resources and Environmental Protection Act, MCL 324.2140, in order to preserve the agricultural values of the Property as established or defined by the Baseline Documentation Report, through a continuation of the land use patterns, including, without limitation, those existing at the time of the grant, as identified in the Baseline Documentation Report, that do not significantly impair or interfere with those values; and

WHEREAS, The Property consists of primarily productive agricultural land. The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and general productive capacity of the Property in perpetuity; and

WHEREAS, Grantee desires to accept a development rights easement with respect to the easement property;

WITNESSETH: For and in consideration of the sum of ONE DOLLAR, (\$1.00); and the mutual covenants recited below, and pursuant to Section 170(h) of the Code and the laws of the State of Michigan, in particular the Conservation and Historic Preservation Easement Act, Sub Part 11 of Part 21 of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended, MCL Sections 324.2140 et seq., Grantor hereby grants and conveys to Grantee a perpetual development rights easement over, under, upon, and across the easement property subject to, and upon, the following terms and conditions:

PURPOSE: To perpetually preserve the Property's agricultural use, including the protection of prime, unique or important soils, by preventing any use that would significantly impair or interfere with the agricultural value as established or defined by the Baseline Documentation Report.

1. RESTRICTIONS. The Property shall be subject to easements, building and use restrictions of record and further subject to the following conditions:

- (a) Grantor shall not divide or subdivide the Property.
- (b) Commercial or industrial activity that is inconsistent with a typical farming operation, as are customary in the vicinity of the property, and commercial recreational activities are prohibited on the Property. Storage, retail or wholesale marketing or processing of agricultural products is a permitted use if more than fifty percent (50%) of the stored, processed, or merchandised products are produced by the farm operator on the property for at least three (3) of the immediately preceding five (5) years.
- (c) Grantor may grant an easement for limited agricultural uses, such as easements for agricultural uses, which will not impair the agricultural values of the property and is prohibited from granting an easement for access for development purposes or public utilities, such as sanitary sewer, water, drains, telephone lines, cellular towers, radio towers and similar uses. Future easements shall be subordinate to this Easement. Prior to granting such an easement, Grantor shall notify and obtain approval from the Grantee of proposed easements as indicated in 3(b).

- (d) The construction or placement of buildings, camping accommodations, mobile homes, or any other structures is prohibited, except as herein noted. Structures may be built for uses consistent with farm operations. Structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations. Grantor shall provide notification to Grantee of proposed buildings via registered mail as required in 3(c). No notice is required for the construction of fences and seasonal structures such as duck or deer blinds.
- (e) Grantors shall not engage in or permit any filling, excavating, dredging, mining, removal of topsoil, sand, gravel, rock, minerals or other materials, building of roads or changes in the topography of the land in any manner. This paragraph shall not prohibit grantor from making landscape alterations consistent with existing agricultural practices, such as the reshaping of the land to improve "air drainage" for fruit production, the removal of a sand ridge to accommodate agricultural equipment, or the tiling of the land. Grantor shall notify and obtain approval from grantee for any land modification in excess of 1 acre in size as required in 3(d). Grantee may not approve a land modification in excess of 1 acre in size that is inconsistent with the preservation of the land for agricultural purposes.
- (f) Grantor may explore and extract natural gas and oil, upon review and approval by Grantee. Exploration and extraction activities shall be limited to one site no more than 1 acre in size. The land area shall be returned to pre-exploration and extraction conditions within 1 year from the date of discontinuance of the exploration and extraction operation. Grantor shall provide notification to Grantee of possible exploration and extraction activity as required in 3(e). Any future leases associated with the exploration and extraction of oil and gas shall be subordinate to the terms and conditions of this easement.
- (g) Grantor shall not dump or accumulate waste or other unsightly or offensive material. This shall not be construed to preclude typical agricultural activities, such as the disposal or use of plant and animal waste that is produced on the Property, so long as such activity is in accordance with all applicable federal, state, and local laws.

2. PERMITTED USES. Grantor retains all ownership and possession rights, which are not expressly restricted by this Easement. In particular, the following rights are reserved:

- (a) **Agricultural Use.** Grantor retains the right to continue agricultural use as defined. For purposes of this Easement agricultural use means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including the breeding and grazing of cattle, swine, captive cervidae, equines and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; aquaculture, Christmas trees; and other similar uses and activities. The management and harvesting of a woodlot is not considered as an agricultural use but is a permitted activity under this Easement.
- (b) **Right to Convey.** Grantor retains the right to sell, mortgage, bequeath or donate the Property. Any conveyance shall indicate the existence of and will remain subject to the terms of this Easement and the subsequent owner will be bound by all obligations in this Easement. Grantee shall be notified by first class mail, within ninety (90) days, when any conveyance of the Property occurs.

- (c) **Right to Maintain and Replace Existing Structures and to Build New Structures.** Grantor retains the right to build, add on to, maintain, renovate or replace structures consistent with paragraph 1(d). Any expansion, replacement or addition of a non-residential structure may not substantially alter the unique agricultural value of the Property. In no case shall and the total impervious surface area, including all new and existing buildings, exceed two percent of the total easement defined at the time this easement is recorded. Grantor also retains, reserves and shall continue to enjoy the use of the Property for any and all purposes, which are not inconsistent with this Easement.
- (d) **Forestry.** Grantor retains the right to conduct forestry activities for domestic and commercial purposes. Domestic forestry includes the cutting of firewood (only for heating of residences and other structures on the property), blowdowns, dead and diseased trees, the removal of trees and hedge rows to improve the farming operation and trees that pose threats to persons or property. Commercial forestry activities shall be in accordance with a Forest Management Plan prepared by or in consultation with a registered professional forester. The goals of such commercial timbering practices or plans shall include the preservation of the conservation and scenic characteristics of the woodlands and wetlands and the maintenance of a healthy forest, and shall assure sustainable forest productivity in a manner not inconsistent with the purpose of this Easement. No practice or plan shall include provisions allowing clear cutting or even-aged management. For the purposes of this subparagraph, "commercial timbering" shall mean any cutting of trees for sale or use off the property other than by Grantor for Grantor's personal, non-commercial use. Such activities shall not materially impair the conservation values of the Protected Property.
- (e) **Outdoor Recreational Activities.** Grantor retains the right for domestic, non-commercial purposes to engage in any outdoor recreational activities, including hunting, that are not disruptive of the natural environment and which are not inconsistent with the purpose of this Conservation Easement.
- (f) **Educational, Charitable, and Research Activities.** Grantor reserves the right to conduct low-intensity non-profit educational, charitable, and research activities on the Property, including activities for a fee, that are subordinate to and directly supportive of the use of the property for agriculture, environmental and habitat research purposes and are consistent with the protection of the conservation values of the property. Such activities may include but are not limited to:
1. Wildlife, botanical, ecology, and biodiversity research and programs;
 2. Endangered species research and programs;
 3. Habitat management and enhancement;
 4. Natural resource conservation management;
 5. Air, water, and soil quality monitoring, research, and programs;
 6. Field trips, seminars, workshops, and other programs related to the agricultural values of the property;
 7. Archaeological research;
 8. Nature-based tourism activities; and
 9. The development of alternative energy sources.
- (g) **Additional Rights.** Grantor retains the right to engage in all acts and uses that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement.

3. **NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS.** The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs 1(c), 1(d), 1(e) and 1(f) is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement.
- a) **Actions not Requiring Notice or Approval.** Actions not requiring notice or approval include construction of fences and seasonal structures as noted in 1(d), and typical agricultural activities such as disposal or use of plant and animal waste as noted in 1(g), and removal of trees and hedge rows as noted in 2(d). All actions not requiring notice or approval shall be subject to the limitations as set forth for the particular activity in the applicable subsection.
 - b) **Notice and Approval Required Regarding Granting of Easements.** Grantor may grant an easement in accordance with the provisions of 1(c). Grantee shall be notified by first class mail, within ninety (90) days prior to when any easement is granted. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(c).
 - c) **Notice and Approval Required Regarding Construction and Placement of Buildings.** Grantor may construct buildings in accordance with the provisions of 1(d) and 2(c). Grantee shall be notified by first class mail, within ninety (90) days prior to the construction of buildings. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(d) and 2(c).
 - d) **Notice and Approval Required Regarding Land Modification.** Grantor may modify the land in accordance with the provisions of 1(e). Grantee shall be notified by first class mail, within ninety (90) days prior to the modification of the land. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(e) and the purpose of this Easement.
 - e) **Notice and Approval Required Regarding Exploration and Extraction of Oil and Natural Gas.** Grantor may explore and extract oil and natural gas in accordance with the provisions of 1(f). Grantee shall be notified by first class mail, within ninety (90) days prior to the commencement of exploration or extraction. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the protection of the agricultural values of the Property.
4. **RIGHTS OF THE GRANTEE.** Grantor confers the following rights upon Grantee to perpetually maintain the agricultural values of the Property:

- (a) **Right to Enter.** Grantee has the right to enter the Property to monitor or to enforce compliance with this Easement by Grantor, Grantor's successors, heirs or assigns, Grantee may not, however, unreasonably interfere with Grantor's use and quiet enjoyment of the Property. Grantee has no right to permit others to enter the Property. The general public is not granted access to the Property under this Easement.
- (b) **Right to Enforce.** The right to enforce by proceedings at law or in equity the above covenants, including but not limited to, the right to require restoration of the Property to the condition at the time of the grant of this Easement.

5. **GRANTEE REMEDIES.** This section addresses cumulative remedies of Grantee and limitations on these remedies.

- (a) **Grantee's Discretion.** Grantee has discretion to enforce, forbear or delay to exercise its rights under this Easement. A delay in enforcement shall not be construed as a waiver of Grantee's right to eventually enforce the terms of this Easement, nor can such delay be used by Grantor, Grantor's successors, heirs or assigns as an equitable defense in estoppel or laches.
- (b) **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers or the unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and major tree disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violation of the terms of this Easement.
- (c) **Notice and Demand.** If Grantee determines that Grantor is in violation of Easement, or that a violation is threatened, Grantee will provide written notice, via registered mail, to Grantor. The written notice will identify the violation and request corrective action to cure the violation or to restore the Property.
- (d) **Failure to Act.** If, for a twenty-eight (28) day period after written notice, Grantor continues violating this Easement, or if Grantor does not abate the violation and implement corrective measures requested by Grantee, Grantee may bring an action in law or in equity to enforce the terms of this Easement. Grantee shall be entitled to enjoin the violation through injunctive relief, or to seek specific performance, declaratory relief, restitution, reimbursement of expenses, or an order compelling restoration of the Property to the condition prior to the claimed violation. If the court determines that Grantor has failed to comply with this Easement, then Grantor also agrees to reimburse all reasonable costs and attorney fees incurred by Grantee.
- (e) **Grantor's Absence.** If Grantee determines that this Easement is, or is expected to be, violated, Grantee will make good faith efforts to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the agricultural values, then Grantee may pursue its lawful remedies without prior notice and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all reasonable costs associated with this effort.

- (f) **Cumulative Remedies.** The preceding remedies of Grantee are cumulative. Any or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Easement.

6. **OWNERSHIP COSTS AND LIABILITIES.** Grantor or Grantor's successors, heirs or assigns retain ownership with full rights to control and manage the Property and shall bear all costs and liabilities of any kind related to property ownership, operation, maintenance, and taxes, including maintaining adequate comprehensive general liability insurance. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee under this Easement as Grantee will have no management responsibilities and will exercise no direct control over any potential hazards on the Property. Grantor's liabilities under this paragraph transfer to a new owner upon transfer of Grantor's interest in the Property.
7. **SUCCESSORS.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, Grantor's and Grantee's respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property regardless of whether future conveyances of the Property expressly refer to this Easement.
8. **TRANSFER BY GRANTOR.** Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year. Grantor further agrees to give written notice to Grantee of the transfer of any such interest prior to, at, or at least twenty (20) days following the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
9. **MICHIGAN LAW.** This Easement will be construed in accordance with Michigan Law. This Easement shall be enforceable against any subsequent owner of the Easement premises despite a lack of privity of estate or contract.
10. **BASELINE DOCUMENTATION.** The Grantor and Grantee agree that the natural characteristics, ecological features, physical and man-made conditions of the Property at the time of this grant are documented in a Baseline Documentation Report, dated [\[insert\]](#), on file at the office of the Grantee, incorporated herein by this reference and attached as EXHIBIT "B", prepared by the Grantee and signed and acknowledged by Grantor and a representative of Grantee, establishing the condition of the Property at the time this easement is recorded and including reports, maps, photographs and other documentation. Grantee may use the baseline documentation in enforcing provisions of this easement, but is not limited to the use of the baseline documentation to show a change of conditions.
11. **SUBORDINATION.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

12. **LIMITATIONS ON AMENDMENT.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Michigan. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit residences to be constructed on the Property, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be executed by Grantee or by Grantee's successor in title to the benefits of this Easement and shall be filed in the office of the Register of Deeds for [insert] County, Michigan. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.
13. **TITLE AND ENVIRONMENTAL WARRANTIES.** Grantor warrants that Grantor has good title to the property; that the Grantor has the right to convey this Easement; and that the Property is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.
14. **LIABILITY & INDEMNIFICATION.** Grantor shall indemnify, defend, and hold harmless Grantee and the United States from any liability resulting from Grantor's negligent acts, including, but not limited to, the release, use or deposit of any hazardous substance on the Property.
15. **LIMITATIONS ON ASSIGNMENT BY GRANTEE.** The benefits of this Easement shall not be assignable by Grantee, except (i) if as a condition of any assignment, Grantee requires that the purpose of this Easement continues to be carried out, (ii) if the assignee, at the time of assignment, qualifies under Section 170(h) of the Code and the laws of the State of Michigan as an eligible donee to receive this Easement directly; and (iii) Grantor consents in writing to such assignment, such consent not to be unreasonably withheld or delayed. Grantee agrees to notify Grantor in writing at least sixty (60) days prior to any contemplated assignment of this Easement. Any attempted assignment by Grantee of the benefits of this Easement contrary to the terms hereof shall be invalid but shall not operate to extinguish this Easement.
16. **LIMITATIONS ON EXTINGUISHMENT.** This easement may only be terminated or extinguished by a court of competent jurisdiction upon a request as mutually agreed to by Grantor and Grantee and after a finding by the court that the conditions or circumstances on or surrounding the Property have changed to such a degree that it has become impossible to fulfill the conservation purposes of the easement. If this Easement is extinguished under the terms provided, the Grantee shall be paid in accordance with their respective percentage interests in the fair market value of the Property at the time of extinguishment. Such percentage interests are determined under the provision of paragraph 20, adjusted, if necessary, to reflect a partial extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

17. **PERCENTAGE INTERESTS.** For purposes of this paragraph, the parties hereto stipulate that the Easement and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of any termination of the easement to the value of the Property, without deduction for the value of the Easement, on the effective date of this grant.
18. **CONDEMNATION.** If all or any part of the Property is taken by exercise of the power of eminent domain, by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 15 and 16 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this paragraph 17 shall be in addition to, and not in limitation of, any rights they may have at common law.
19. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
20. **SEVERABILITY.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and their application to other persons and circumstances shall not be affected thereby.
21. **EFFECTIVE DATE.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this **DEED OF CONSERVATION EASEMENT** is recorded in the office of the Register of Deeds for [insert] County, Michigan, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement.
22. **NOTICES.** Any notices which either the Grantors or Grantee may desire or be required to give to the other party shall be in writing. The following address indicates where such notices shall be addressed:

Grantee Address

Michigan Department of Agriculture
P.O. Box 30449
Lansing, MI 48909

IN WITNESS WHEREOF, the Grantor has signed this agreement on this _____ day of _____, 2005.

GRANTORS

[Name]

[Name]

STATE OF MICHIGAN

COUNTY OF [county]

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On this _____ day of _____, 2005, before me, a Notary Public, personally appeared [name], to me known to be the same person(s) who executed the foregoing easement and acknowledged the same to be his/her/their own free act and deed.

Notary Public

_____ County, Michigan

My Commission Expires: _____

This Easement has been accepted by the Grantee, Michigan Department of Agriculture, on the date and year shown below.

GRANTEE
MICHIGAN DEPARTMENT OF AGRICULTURE

 By: Richard A. Harlow, Program Manager
 Farmland and Open Space Preservation
 Environmental Stewardship Division
 Date: _____

STATE OF MICHIGAN }
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 COUNTY OF INGHAM

On this ____ day of _____ 2006, before me, a Notary Public, personally appeared **Richard A. Harlow**, to me known to be the Program Manager, Farmland and Open Space Preservation, Environmental Stewardship Division, Michigan Department of Agriculture, and acknowledged the same to be his own free act and deed.

 Katharine McGarry, Notary Public
 Eaton County acting in Ingham County, Michigan
 My Commission Expires: January 28, 2007

Prepared By and Return To:
 Richard Harlow, Program Manager
 Farmland and Open Space Preservation
 Environmental Stewardship Division
 Michigan Department of Agriculture
 P.O. Box 30449
 Lansing, MI 48909

Tax Parcel #[insert]